IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL WRIT PETITION NO. 3091 OF 1997

Raju Abdulkadar Momin — Petitioner
Vs.
The President, Barsi Municipal Council, Barsi & ors. — Respondents

Mr.S.G.Kudle for petitioner.
Mrs.S.S.Bhende, AGP for State.
Mr.Killedar h/f. Mr.Nitin Jamdar for Resp.No.2.

CORAM: B.H.MARLAPALLE & D.B.BHOSALE,JJ.

March 07, 2006.

ORAL JUDGMENT (PER B.H.MARLAPALLE,J.)

1. In this petition filed under Article 226 of the Constitution the petitioner is praying for a writ of mandamus against the respondent-Council for appointing him as a peon (Class IV employee) in its establishment on compassionate ground.

2. The petitioner's father was a permanent employee of the Municipal Council in its Octroi Department from 16/10/1968 and while in service he died on 15/8/1981. As per the petitioner his mother submitted an application on or about 18/5/1983 for appointment on compassionate ground for herself but the Municipality did not consider the same and no decision was communicated to her. The petitioner was born on 1/6/1976 and his father died on 15/8/1981

which means the petitioner was about 5 years of age when his father died. He states that on attaining majority he made an application on 18th March 1994 for appointment on compassionate ground and it was not considered. He submitted another application on 4/7/1996 for the very same purpose and requested the Municipal Council to appoint him on compassionate ground in Class IV. There has been no response from the Municipal Council and, therefore, he approached this Court.

3. The Municipal Council has filed affidavit-in-reply and submitted that the petitioner was of about five years of age when his father died and when the petitioner submitted the first application on 18/3/1994 the time span between his father's death and date of application was more than 13 years and the time second application was made, it was beyond 16 years. As per the Municipality such a belated claim could not be considered for appointment on compassionate ground and the Municipality in support of its contentions relied upon the following decisions:

. (i) Jagdish Prasad v. State of Bihar **[(1996)**

1 SCC 301] and (ii) Haryana State Education Board v.

Hakim Singh **[(1997) 8 SCC 85]**.

4. The policy for appointment on compassionate ground as relied upon by the petitioner is through the Circular dated 27th September 1977 and the Government Resolution dated 23rd April 1976. We have noticed that the said policy is governed by certain terms and conditions as set out in the G.R. and appointment for compassionate reasons has to be made at the earliest possible provided requirements of qualification and age etc. are satisfied. In the instant case the petitioner was only of five years of age when his father died and, therefore, it was possible for his mother to apply. We have been informed that such an application was made for the first time on 18/5/1983. It is not the petitioner's case that when his father died in August 1981, his mother did not possess the requisite qualifications and she applied after two years only when she obtained these qualifications. In fact for the appointment as a peon, the mother purportedly claimed that she possessed the qualifications and also met the requirement of age. Clause 4 of the G.R. dated 23rd April 1976 reads as under:

"4. If none of the relative is educationally qualified on the date of the death of the Government servants or his retirement, a relative who acquired the qualifications within 3 years from the date may be given employment, provided he/she is within the age limit prescribed for the post subject to relaxation mentioned in paragraph 3 above."

5. We are satisfied that the petitioner's mother's application did not fulfill the conditions of the above referred para. The petitioner himself has applied after 13 years and it is also to be noted that the Government of Maharashtra has in fact issued Government Resolutions from time regulating the issue of appointments on compassionate ground and this time span of three years has been altered/delted. The concept of compassionate appointment has ben interpreted and expanded by catena of decisions and it is an assistance immediately available to the bereaved employee's family. The facts of this case are in para materia with the facts in the case of Hakim Singh (Supra) and the following observations in para 10 from the judgment of the High Court are relevant to be noted:

> "Neither in the service of the Harayana Government nor in the service of the respondent-Board a person below the age of 18 years can be given employment. Therefore, if a deceased employee is survived by minors, it is impossible to give effect to the condition incorporated in the circulars of the Board dated 26/9/1985 and 1/10/1986, which requires submission of application within three years of the death of the employee. A condition which is impossible to be performed is ordinarily liable to be treated as arbitrary and unconstitutional but if such condition can be given a reasonable meaning so as to avoid the charge of unconstitutionality that interpretation has to be preferred. Therefore, the instructions contained in the circulars dated 26/9/1985 and 1/10/1986 will have to be interpreted to mean that in case of a minor child the period of three years would be applicable from the date he becomes major."

The Supreme Court was pleased to set aside the above reasoning adopted by the High Court, as being not in consonance with the law.

6. We are, therefore, satisfied that the claim of the petitioner for appointment on compassionate ground cannot be considered and, therefore, this petition fails. The petition is hereby dismissed.

Rule discharged. No costs.

(D.B.BHOSALE,J.) (B.H.MARLAPALLE,J.)